**COMMONWEALTH OF THE BAHAMAS CRI/vbi/125/5/2017**

**In The Supreme Court**

**Criminal Side**

**B E T W E E N**

**REX**

**vs**

**VICTORIA GIBSON**

**Before: The Honourable Mr. Justice Gregory Hilton**

**Appearances: Basil Cumberbatch along with Cashena Thompson for Director of Public Prosecution**

**Brendalee Rae for the Accused.**

**Hearing Date: 1st February, 2023**

**RULING ON NO CASE SUBMISSION**

**[Criminal Law – No Case Submission – Murder Circumstantial Evidence]**

**Hilton, J.**

1. The Accused is charged with Murder Contrary to Section 291(1) (b) of the Penal Code Chapter 84.

“**That you Victoria Gibson, sometime between Thursday, 30th March, 2017 and Friday, 31st March, 2017, at New Providence, Murdered Terenova Stubbs.”**

1. The Accused pleaded not guilty on her arraignment and the Prosecution commenced the trial on 16th January, 2023. At the close of the case for Prosecution, Counsel for the Accused, made a Submission of No Case to Answer Pursuant to Section 170(1) of the Criminal Procedure Code.
2. Counsel for the Accused has submitted Firstly, that an essential element in the charge was not proven that is, that there was no sufficient evidence to establish that the person who inflicted the fatal stab wound on the deceased was the Accused and that consequently the Accused should not be called upon to give a defence in accordance with the first limb of the test set out in ***R. v. Galbraith (1981) 1 W.L.R. 1039.***
3. Counsel for the Accused also submitted Secondly, that the evidence of the witnesses is tenuous, inherently weak and inconsistent with other evidence and falls within (part A) of the second limb of the test set out in ***R. v. Galbraith*** and the Prosecution evidence, taken at its highest, it such that a jury properly directed could not properly convict upon it and consequently the Accused should not be called upon to give a defence.
4. Counsel for the Prosecution has submitted that the evidence adduced by the Crown is sufficient to support the charge that the Accused Murdered the deceased and that the evidence, while circumstantial, falls within the (Part B) of the second limb of the guidelines set out in ***R. v. Galbraith***.
5. Counsel for the Crown submits that where there are any questions of credibility of the witnesses these are matters that the Judge should leave for the Jury, who are the judges of the facts.

**THE LAW**

7. The guiding principles when the Court is presented with a submission of “No Case To Answer” at the close of the Prosecution’s case are set out in ***R. v. Galbraith [1981] 1WLR 1039 at page 1042 B-D where Lord Lane C.J. Stated***.

“How then should a judge approach a submission of “No Case?”

(1) If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence,

(a) Where the judge comes to the conclusion that the prosecution’s evidence taken at its highest is such that a jury properly directed could be properly convict upon it, it is his duty, upon a submission being made to stop the case.

(b) Where, however, the Crown’s evidence is such that its strengths or weakness depends on the view to be taken of a witness’s reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the Defendant is guilty, then the judge should allow the matter to be tried by the jury. There will of course, as always in this branch of

the law be borderline cases. They can safely be left to the discretion of the Judge”.

8. In ***DPP v. Varlack [2008] UKPC 56***, a case emanating from the British Virgin Islands, the Privy Council, in the judgement delivered by Lord Carswell succinctly restated the Galbraith principles as follows at paragraph 21:

*“The basic rule in deciding on a submission of no case at the end of the evidence adduced by the prosecution is that the judge should not withdraw the case if a reasonable jury properly directed could on the evidence find the charge in question proved beyond reasonable doubt. The Canonical Statement of Law, as quoted above is to be found in the judgement of* ***Lord Lane CJ in R. v. Galbraith******[1981] 1WLR 1039, at 1042****. That decision concerned the weight which could properly be attached to testimony relied upon by the Crown as implicating the Defendant, but the underlying principle, that the assessment of the strength of the evidence should be left to the jury rather than being undertaken by the Judge, is equally applicable in cases such as the present, concerned with the drawing of inferences.”*

9. In ***Blackstone’s Criminal Practice 2010 at D15.56*** the following principles were advanced are representing the position that has now been reached on determining submissions of No Case to answer:

*“(a) If there is no evidence to prove as essential element of the offence, a submission must obviously succeed.*

*(b) If there is some evidence which, taken at face value, establishes each essential element, the case should normally be left to the jury.*

*(c) If, however, the evidence is so weak that no reasonable jury properly directed could convict on it, a submission should be upheld. Weakness may arise from the sheer improbability of what the witness is saying, from internal inconsistencies in the evidence or from its being of a type which the accumulated experience of the courts has shown to be of doubtful value.*

*(d) The question of whether a witness is lying is nearly always one for the jury, but there may be exceptional cases* ***(such as Shippey [1988] Crim LR 767)*** *where the inconsistencies are so great that any reasonable tribunal would be forced to the conclusion that the witness is untruthful, and that it would not be proper for the case to proceed on that evidence alone.”*

10. In ***Crosdale v. R [1995] UKPC 1***, a decision of the Privy Council emanating from Jamaica, Lord Steyn, in considering the question: whether, where the defence applies to make a no case submission in the absence of the jury it is right for a Judge to refuse the application and to hear the submission in the presence of the jury? Lord Steyn stated in paragraph 20:

*“20. A judge and a jury have separated but complementary functions in a jury trial. The judge has a supervisory role. Thus the judge carries out a filtering process to decide what evidence is to be placed before the jury. Pertinent to the present appeal is another aspect of the judge’s supervisory role: the judge may be required to consider whether the prosecution has produced sufficient evidence to justify putting the issue to jury. Lord Devin in Trial by Jury, the* ***Hamlyn Lectures, (1956, republished in 1988)*** *aptly illustrated the separate roles of the judge and jury. He said (at page 64):-*

*“… there is in truth a fundamental difference between the questions whether there is any evidence and the question whether there is enough evidence. I can best illustrate the difference by an analogy. Whether a rope will bear a certain weight and take a certain strain is a question that practical men often have to determine by using their judgment based on their experience. But they base their judgment on the assumption that the rope is what it seems to the eye to be and that it has no concealed defects. It is the business of the manufacturer of the rope to test it, strand by strand if necessary, before he sends it out to see that it has no flaw; that is a job for an expert. It is the business of the judge as the expert who has a mind trained to make examinations of the sort to test the chain of evidence for the weak links before he sends it out to the jury; in other words, it is for him to ascertain whether it has any reliable strength at all and then for the jury to determine how strong it is…. The trained mind is the better instrument for detecting flaws in reasoning; but if it can be made sure that the jury handles only solid argument and not sham, the pooled experience of twelve (12) men is the better instrument for arriving at a just verdict. Thus logic and common sense are put together to make the verdict.”*

11. When reviewing the above authorities it is clear that a judge should be careful not to usurp the role of the jury who are judges of the facts. However, a judge is duty bound to ensure that Accused persons are safeguarded from conviction on the facts which are insufficient or precarious and so that injustice would not result.

**THE FACTS**

12. The Prosecution called twelve (12) witnesses in support of the charge. The pertinent testimony is set out below.

13. Ms. Yvette Lynden testified that she was the mother of the deceased Terenova Stubbs and she identified his body at the Morgue on 31st March, 2017 to the Doctor in the presence of a Police Officer.

14. Inspector Trevor McKinney testified that on 31st March, 2017 he received information of an incident and went to Potters Cay Dock and took photos of the scene and later that day went to the Grove Police Station and took photos of four (4) persons who were in custody; one of whom was the Accused. He downloaded the photos to a C.D. which was tendered as an exhibit

15. Lakeisha Demeritte testified that on the night of 30th March, 2017 she went to Potter’s Cay Dock with the Accused, the Accused mother and several other persons. She said she was a friend of the Accused’s mother and knew the Accused for twenty (20) years as they lived in the same community.

She testified that at some point persons began arguing and a big fight broke out when one Shaquille Wilmore threw a bottle in the crowd. She said she was on the east side of Potter’s Cay Dock where Shaquille Stubbs (the brother of the deceased) was when she saw the deceased Terenova Stubbs come from the west side of Potter’s Cay Dock gasping for breath and with blood spouting from his chest.

She said as far as she knew the Accused Torri was on the west side of the dock but she did not know what she was doing.

She said she told the Police she did not see anything and said the Police pressured her to tell them it was Torri who did it.

She testified that she did not see who stabbed the deceased. That she did not see Torri stab the deceased.

She said the crowd went wild after Shaquille Wilmore threw the bottle and everyone was fighting.

16. Shaquille Stubbs (the brother of the deceased) testified that on 30th March, 2017 he went on Potter’s Cay Dock to celebrate his birthday along with the deceased, Marvin and Morvin and other persons. He said he was drinking Hennessy.

He said he knew the Accused Torri as they lived in the same area of Key West Street for more than ten (10) years.

He identified the Accused in Court.

He said that on that night on 30th March, 2017 while they were partying a fight broke out with many persons.

He said he saw the Accused hit Shaquille Wilmore in the head with a bottle and then stated to row with him.

He said at that time Lakeisha Demeritte then came to fight him. He said he picked up a bottle to fight also.

He said he saw the Accused break a bottle on the ground and go under a dark area of the dock where he could not see; and a short while later he saw his brother, the deceased come from that area and say “A girl juck me”.

He said other persons were under the dock and the Accused was the only girl under the dark area of the dock.

Under cross-examination his Police Statement was shown to him and he admitted that it had no mention of him seeing the Accused break a bottle on the ground or go under a dark area of the dock where the deceased was.

He denied that this was a recent fabrication.

17. Police Cpl. 3607 Danza testified that on 31st March, 2017 around 12:57 a.m. he received information.

He said he went to Key West Street and saw three (3) females and one (1) male. He said he identified the Accused as one of the females and she had a severe cut to her right hand one of the other females had on an all in one outfit with discoloration that appeared to be blood, and the male had blood on his shoes.

He said all four (4) of the persons were arrested.

18. A.S.P. Ezra Maycock testified that on 1st April, 2017 he collected the Accused from the cell block for the purpose of conducting an Identification (I.D.) Parade which she declined to participate in.

19. D/A.S.P. Jamal Evans testifies that he prepared a twelve (12) person photo lineup comprising persons of similar physical characteristics as the Accused which was shown to Lakeisha Demeritte and Lakeisha Demeritte identified the Accused in the photo lineup.

20. W/Sgt. 2980 Raquell Richardson testifies that on 1st April, 2017 she was present at the Record of Interview conducted by ASP Miller with the Accused.

She said the Accused denied breaking a bottle on 31st March, 2017 while at Potters Cay Dock and denied stabbing the deceased.

The Record of Interview was tendered as part of the Prosecution’s Case.

She said she collected the Accused’s clothing for blood analysis.

21. A.S.P. Sony Miller testified that her was the investigator in this matter and interviewed the Accused who denied stabbing the deceased at Potter Cay Dock on 30th or 31st March, 2017; but admitted that she was called Torri; And stated she left before the deceased was stabbed.

He testified that he also interviewed Lakeisha Demeritte as a suspect in the Murder.

He denied that he had a beef with the Accused and denied that he was trying to frame her.

He testified that he charged the Accused based on his investigations.

When the photo of the Accused was shown to him he said he could not recognize her in the photo as that was almost six (6) years ago.

22. Shaquille Wilmore testified that on 30th March, 2017 at night he was on Potter’s Cay Dock when a fight broke out that started with a man called Twin.

He said he did not know Twin’s name and that Twin was not the deceased.

He said he knew the Accused as Torri. He did not know her full name but said they went to school together for about three (3) years and use to see her often.

He said during the fight the Accused hit him in his head with a bottled and Lakeisha and Judy along with the Accused was fighting with him.

He testified that during the fight he did not see who happened to the deceased until he saw him laying down on the ground “looking lifeless”.

He identified the Accused and Lakeisha Demeritte in the CD photos that were tendered.

He said he didn’t see who stabbed the deceased and that plenty people were involved in the fight including plenty females but the only females he knew by name were Torri, Lakeisha and Judy.

23. Dr. Caryn Sands the Pathologist testified that on 4th April, 2017 she did a Post Mortem on the body of the deceased and produced a report which was tendered in the trial.

She said the cause of death was a single stab wound to the chest caused by a single-edged sharp weapon.

Under cross-examination she said the stab wound could be consistent with being caused by a knife and that the type of injury inflicted was usually from close range and caused significant bleeding both internally and externally.

Under re-examination she said a broken bottle if it leaves a sharp pointed edge could cause the injury.

**DEFENCE SUBMISSION**

24. Counsel for the Accused in her written submissions on pages 2-3 submitted as follows.

For the offence of Murder, we say this case falls under limb 1 of the Galbraith Guidelines:-

“(1) if there is no evidence that the crime alleged has been committed by the Defendant there is no difficulty. The Judge will of course stop the case.”

The Crown has not produced any evidence that the Defendant stabbed and killed the deceased. The Prosecution has not produced one (1) witness who saw the Defendant stab the deceased. Ms. Demeritte stated while under Oath the she did not see the Defendant stab Mr. Stubbs. Mr. Shaquille Wilmore also stated that he did not see who stabbed Mr. Stubbs; nor did Shaquille Stubbs, the brother of the deceased, see who stabbed the deceased Terenova Stubbs.

Prosecution witnesses Lakeisha Demeritte, Shaquille Stubbs and Shaquille Wilmore all testified of the countless numbers of people both males and females who were engaged in the heated fight which took place at Potter’s Cay Dock during the evening in question. Therefore, considering the number of people who were under the dock were engaged in the fight, the Prosecution has failed to prove that Victoria Gibson was the person who inflicted the fatal stab wound causing the death of Terenova Stubbs.

It is therefore our submission that as the Crown has produced no (direct) evidence of who stabbed Mr. Stubbs we say that everything else amounts to speculation and as such, has failed to prove that the unlawful harm to Mr. Stubbs resulting in his death, was committed by the Accused.

Mere presence is insufficient to satisfy any element of this offence.

If the Court is not in agreement in relation to limb 1, we submit that the case then falls under (Part B) of limb 2 of the Galbraith Guidelines in that the Prosecution’s evidence is of a tenuous nature because of inherent weakness, vagueness and because it is inconsistent with other evidence and we therefore say, that taken at its highest, a jury properly directed could not properly convict upon it, and the Judge should stop the case…………………………………………………………………

………………………………………………………………………

Prosecution witness Shaquille Stubbs, while on the stand, completely contradicted himself. (The transcript 20/01/23) – page 39 lines 5-17)

*Q. And where did she go?*

*A. She go underneath – it was like a shadow, you couldn’t see.*

*Q. You couldn’t see?*

*A. No.*

*Q. She went under there?*

*A. Yes.*

*Q. Who was under there to your knowledge?*

*A. My brother.*

*Q. Were any other females under there?*

*A. No.*

*Q. Was she the only female under there?*

*A. Yes.*

We submit that Shaquille Stubbs’ testimony is fundamentally

contradictory, because he states that Victoria went into a shadow and

that he couldn’t see, yet although unable to see, he stated that Ms.

Gibson was the only female there.

This story, we say is completely implausible and makes no logical

sense and it is our submission that it should not be left to the jury as

was stated in ***R. v. Shippey [1988] Crim L.R. 767.*** Mr. Stubbs’

testimony is “Frankly incredible” and has “really significant inherent

inconsistencies”.

For the above reason we submit that the No Case Submissions

Should be upheld.

**PROSECUTION SUBMISSIONS**

25. At pages 3-4 of the Crown’s written submissions the Prosecution’s position is succinctly stated as follows:

*“The case for the crown appears to be based on circumstantial evidence. This is because Ms. Demeritte, who originally gave evidence to police officers that she saw Ms. Gibson stab the deceased, recanted her statement through affidavit and on the stand. Nevertheless, Justice Sabola in* ***Clayton Cox v Regina, Criminal Appeal No. 70 of 1198, cited the case of Taylor et al v R (1928) Crim App. R 20*** *where Hewart J in his judgement said: “is has been said that**the evidence against the applicants is circumstantial; so it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by undersigned coincidence, is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that is circumstantial.”*

*Where a no case submission in concerned in this regard, the Court of Appeal in the case of* **Donna Vasyli v Regina SCCrApp255of 2015** *at paragraph 119 said, ”If the case depends upon circumstantial evidence, and that evidence, if accepted, is capable of producing in a reasonable mind a conclusion of guilt beyond reasonable doubt and thus is capable of causing a reasonable mind to exclude any competing hypotheses as unreasonable, there is a case to answer.”*

It is submitted that the evidence before the court is capable of producing in a reasonable mind a conclusion of guilt beyond reasonable doubt. That evidence is based on the following undisputed facts:

1. Ms. Gibson was seen by Mr. Stubbs with a bottle in her hand and breaking it on the walkway. Thereafter she floated under the bridge in a direction where the deceased was.

2. Mr. Stubbs gave additional evidence that the deceased came out from under the bridge bleeding and said to him. “A girl jick me.”

3. According to Mr. Stubbs Ms. Gibson was the only female under the bridge where the deceased was.

4. Ms. Lakiesha Demeritte agreed that Ms. Gibson was on the other side where the deceased came from. This corroborates the evidence of Mr. Stubbs as to the position of Ms. Gibson.

5. P/C 2637 Panza’s evidence is that Ms. Gibson had a severe cut on her right hand.

6. According to Dr. Sands it is possible that a broken bottle with a sharp edge could have caused the deceased death.

These factors taken together are capable of producing in a reasonable mind a conclusion of guilt beyond reasonable doubt.

7. We further submit that notwithstanding the circumstantial evidence this case turns on the credibility of the prosecutions witnesses which according to the Lord Lane CJ in **R. v. Galbraith *(supra****)* in are questions of fact for the jury.

8. In other words where the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability in such cases as Lord Lane said, that is for the province of the Jury. In fact, the court **in R v Baker (1977)65 Cr. App. R. 287 at para 228,** which was also quoted by Lord Lane, Said that,

*“It is not the judge‘s job to weigh the evidence, decide who is telling the truth, and to stop the case merely because he thinks the witness is lying. To do so is to “usurp the function of the jury”.*

9. Hence in this circumstance the Crown submits that the Defendant’s application ought to be dismissed and the case ought to be put to the jury.

**ANALYSIS**

26. In this case the Prosecution is relying on circumstantial evidence. In the ***Vasyli*** case cited by counsel for the Crown at para. 207 when referring to the Privy Counsel decision in ***D.P.P. v Varlack ante the Bahamas Court of Appeal*** stated.

“*At paragraph 22 of the Judgement,* ***(in DPP v Varlack****) the Board considered what should be the correct approach of a trial judge when considering a submission of No-Case in a circumstantial case. Their Lordships adopted with approval a passage found at page 5 of the judgement of the Supreme Court of Southern Australia in Questions of Law Reserved on Acquittal (No.2 of 1993)(1993)61 SAS R1. The passage which Their Lordships endorsed reads as follows.”*

*“… it is not the function of the judge in considering a submission of no-case to choose between inferences which are reasonably open to the jury. He must decide upon the basis that the jury will draw such of the inferences which are reasonably open, as are favourable to the prosecution. It is not his concern that any verdict of guilt might be set aside by the Court of Criminal Appeal as unsafe. Neither is it any part of his function to decide whether any possible hypotheses consistent with innocence are reasonably open on the evidence…He is only concerned with whether a reasonable mind could reach a conclusion of guilt beyond reasonable doubt and therefore exclude any competing hypothesis as not reasonably open on the evidence. I would re-state the principles, in summary form, as follows: If there is direct evidence which is capable of proving the charge there is a case to answer no matter how weak or tenuous the judge might consider such evidence to be. If the case depends upon circumstantial evidence, and the evidence, if accepted, is capable of producing in a reasonable mind a conclusion of guilt beyond reasonable doubt and is capable of causing a reasonable mind to exclude thus any competing hypothesis as unreasonable there is a case to answer. There is no case to answer only if the evidence is not capable in law of supporting a conviction. In a circumstantial case that implies that even if all the evidence for the prosecution were accepted and all inferences most favourable to the prosecution which are reasonably open were drawn, a reasonable mind could not reach a conclusion of guilt beyond reasonable doubt, or to put it another way, could not exclude all hypotheses consistent with innocence, as not reasonably open on the evidence.”*

27. At paragraph 209 of the Vasyli decision the Court of Appeal stated.

***209. In R. v. Glen Micheal Moore, unreported, 20th August 1992, the English Court of Criminal Appeal expressed an opinion on the manner in which a trial judge should approach his task on a no-case submission where the prosecution case is dependent on circumstantial evidence only. Delivering the decision of the Court, Steun LJ (as he then was) stated:***

**“It is clear that a judge need not give any special direction to the jury. On the other hand the approach enunciated by Lord Morris is one which may be helpful when he considers, in a case dependent on circumstantial evidence only, whether a submission of no case to answer ought to be allowed, it may be helpful for the judge to address specifically the question whether the proved facts are such that they exclude every reasonable inference from them save the one sought to be drawn by the prosecution. If the proved facts do not exclude all other reasonable inferences then there must be a doubt whether the inference sought to be drawn is correct. If the judge had approached the matter this way, we believe the judge would have ruled that there was no evidence on which a jury properly directed could*****convict.”*** *[emphasis mine]*

28. In the presence case, the only evidence connecting the Accused to the offence comes from Shaquille Stubbs who testified that he saw the Accused break a bottle on the ground and go under a dark area of the Potters Cay Dock, where he could not see and a short time later the deceased came from

that area to him bleeding from a wound to his chest and said “A girl juck me”.

In Victoria Gibson’s Record of Interview she said she left before the deceased was stabbed and left persons fighting at the Dock after she got cut on her hand when someone hit her with a bottle on her hand.

Shaquille Wilmore’s testimony is that he was involved in the fight but did not see who stabbed the deceased. He also said that during the fight the Accused and others were fighting with him and that numerous males and females were involved in the fight.

In this case there is no direct evidence of anyone seeing the Accused fighting with the deceased or stab the deceased.

29. In the Bahamas Court of Appeal decision of **Deangelo Johnson v. R. SCCCr. App No.11 of 2017** the Court on dealing with the issue of identification and circumstantial evidence stated at paragraph 13 as follows:

*“…The purported identification of the Appellant placed him in the area of the shooting only. Moreover there was no evidence to distinguish the three (3) men who were seen shooting on Milton Street from the four (4) men seen running through the short cut on Deveaux Street. This evidence was an invitation for the jury to speculate about who did the shooting, who did not and whether they were all in it together.*

30. In my view the inferences that the Crown relys on to establish the guilt of the Accused as outlined in their submissions while reasonable do not exclude inferences that are equally reasonable with innocence on the evidence

31. While the issue of the credibility of the witness Shaquille Stubbs is perhaps in play; In my view that issue would be one for the jury. The more relevant issue in this No Case Submission is whether the circumstantial evidence, if accepted, is capable of

producing in a reasonable mind a conclusion of guilt beyond reasonable doubt and thus is capable of causing a reasonable mind to exclude any competing hypothesis as unreasonable on the evidence.

32. There were, on the evidence, many females and males involved in this fight. The evidence is that Shaquille Stubbs knew the Accused as they were from the same neighbourhood and it can be inferred that his brother (the deceased) may also have known her. Therefore the evidence that the deceased said “A girl juck me” and did not say the Accused name, weakens the inference that it was the Accused who stabbed him.

33. The Accused denied fighting with or stabbing the deceased in her Record of Interview tendered in the Prosecutions’ case and stated that she left the scene to go to the hospital after getting cut on her hand when the fight was still going on and before the deceased was stabbed.

There is in my view, a reasonable hypothesis consistent with innocence and is bolstered by Shaniquille Wilmore’s testimony that she was fighting with him which infers that she was not fighting with the deceased at the time.

34. In my view hearing, having reviewed the evidence as outlined above and after considering the law and legal guidelines set out earlier I find that there is no sufficient evidence adduced by the Prosecution to establish that the Accused inflicted the fatal stab wound to the deceased.

35. As a consequence the case against the Accused will be withdrawn from the jury and the jury will be directed to return a verdict of Not Guilty on the charge of Murder.

**Dated this 6th day of February, 2023.**

**Gregory Hilton**

**Justice of Supreme Court**